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Prisoner Of War:

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Introduction

Throughout most of history, members of a military force captured by an enemy had no rights at all. Completely at the mercy of their captors, prisoners of war were killed, tortured, enslaved, held for ransom, and otherwise mistreated. Even after it became the custom to keep prisoners alive, the lack of any accepted standard of treatment led to continued abuses. During the American Revolution, for example, as many as 12,000 American prisoners may have died due to the poor conditions on British prison ships.

This experience led the United States government to have an early interest in the rights of prisoners of war. One of our first international agreements, a 1785 treaty with the Kingdom of Prussia, contained detailed rules (drafted by Benjamin Franklin, John Adams and Thomas Jefferson) to improve treatment of prisoners of war. These rules were later included in other American treaties, including the 1848 Treaty of Guadalupe-Hidalgo ending the war with Mexico.

The first attempt to write down all the applicable rules and laws of war, including those dealing with prisoners, was also an American effort. In 1863, the U.S. Army issued General Order No. 100, which laid out all the laws, rules and customs accepted at that time.

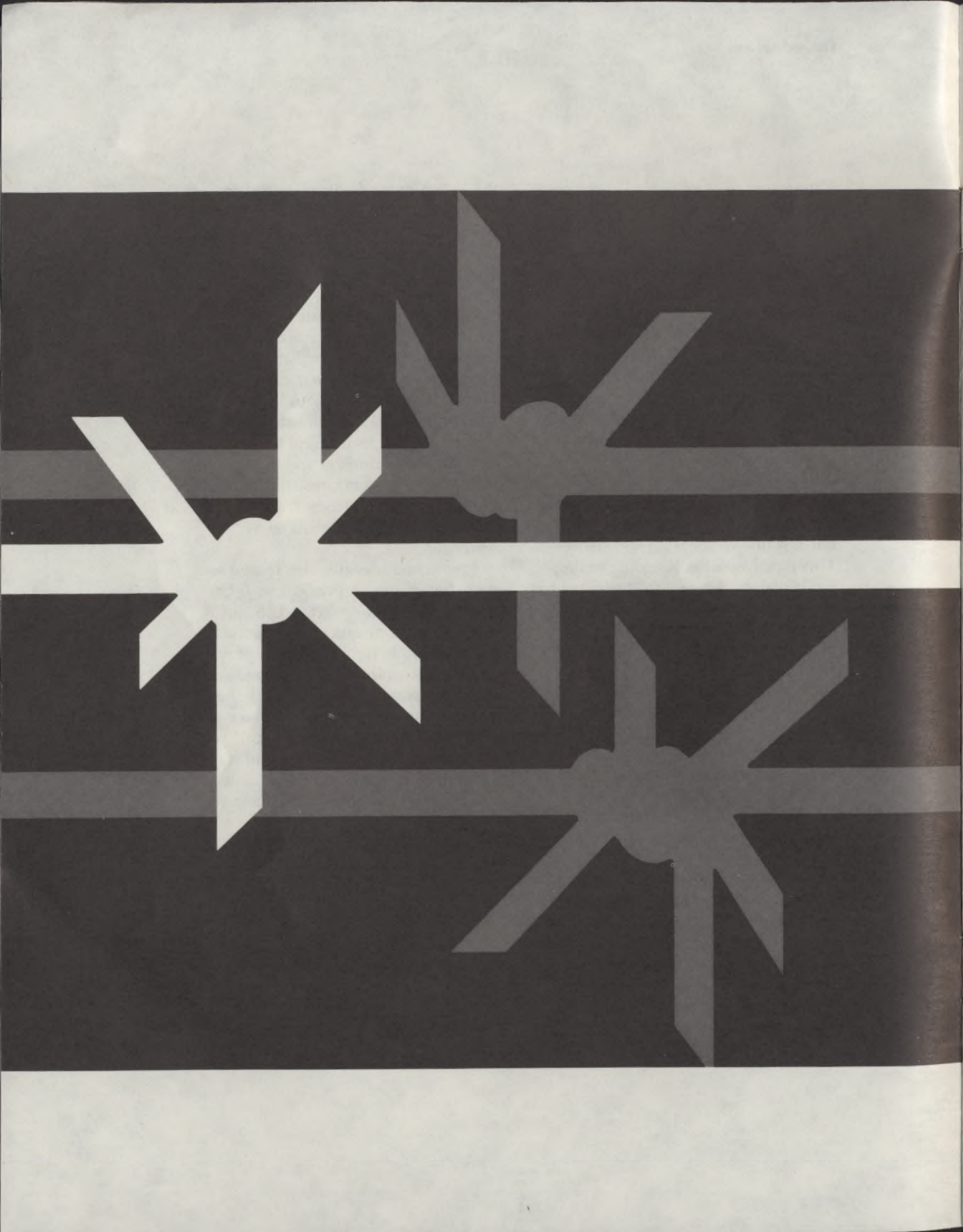
Since then, the United States has continued to act as a leader among the world's nations in developing and expanding the rights and responsibilities of prisoners of war and their captors. At present, these rights are contained in

the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.

There are two practical reasons why you as a member of the armed forces should know about the Geneva Convention.

First, in any combat situation you must be ready to capture and control enemy prisoners until they are sent to permanent prisoner of war camps. The Geneva Convention tells us how to treat prisoners. Fear of mistreatment is the greatest single deterrent to surrender. Atrocities embitter and strengthen the will of the enemy, resulting in prolonged resistance. Decent treatment of prisoners encourages others to surrender.

The second reason is also related to duty, but in a more personal way. Under the *Code of Conduct*, a U.S. Armed Forces member cannot voluntarily choose to become a prisoner of war. But it is recognized that we sometimes may be captured against our wills, because of overwhelming enemy force and a lack of further means to resist. If you should ever become a prisoner of war, knowing your rights and duties under the Geneva Convention could help you.



The Geneva Conventions

The Geneva Convention dealing with prisoners of war is one of four international agreements written at the same time in 1949. The four Conventions together are known as The Geneva Conventions For the Protection of War Victims.

While the Convention on prisoners of war is our main subject, it will be helpful to look briefly at all four Conventions.

On August 12, 1949, at Geneva, Switzerland, representatives of 61 nations, including the United States, completed work on these four international agreements. Each agreement—called a Convention—was designed to establish humane standards of treatment for military personnel or civilians in time of war. The Conventions are now recognized as binding by most of the nations of the world. These include the Soviet Union, the People's Republic of China, and other countries of the Communist world. The Conventions came into force for the United States on February 2, 1955.

Three of these four Conventions merely updated earlier international agreements—dating back about 100 years—dealing with the same subjects. One deals with the protection of the sick and wounded on land. Another concerns the protection of sick and wounded personnel at sea, and those who become shipwrecked. The most widely known of the three Conventions revised in 1949 is the one we are most concerned with in this pamphlet: the Geneva Convention Relative to the Treatment of Prisoners of War.

The fourth Convention, entirely new in 1949, is the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Its purpose is to reduce the unnecessary suffering of civilian noncombatants caught in the turbulence of war.

The four Conventions are long and complex, and even experts argue over what they mean. They do, however, lay down several basic rules for treatment of all protected persons, whether sick, wounded, shipwrecked, prisoners of war or civilians. These basic rules are:

Once armed conflict breaks out, the Conventions are applicable in all circumstances.

The following are prohibited at all times and in all places: torture, execution without regular trial, and all cruel and degrading treatment.

Reprisals on persons protected by the Conventions (e.g., POWs, civilians in occupied territory, etc.) are forbidden.

No one may renounce or be forced to renounce the protection accorded to that person by the Conventions.

Protected persons must at all times be able to have resort to a Protecting Power (the neutral State responsible for safeguarding their interests), and to the International Committee of the Red Cross, or any other qualified humanitarian agency. (The International Committee of the Red Cross, composed of Swiss citizens, is headquartered in Geneva, Switzerland, a traditionally neutral country. It is not the same as the National Red Cross societies of the various countries of the world, which are sometimes under the control of the local government.)

Who Are Prisoners of War?

The Convention on prisoners of war (POWs) applies to all members of the armed forces who fall into enemy hands, from the time of capture until they are released and repatriated. The term "armed forces" includes regular forces, activated reserves and militia (such as the National Guard) and some, but not all, guerilla and resistance fighters.

Under the Convention, only a "competent tribunal" of the capturing nation (the "Detaining Power") may determine whether a person is entitled to be a POW or not. Everyone who is captured or detained during a conflict should therefore be treated as the Geneva POW Convention requires, until the proper tribunal can judge his or her case.

Rights, Privileges, Obligations

All captives, civilian or military, must be disarmed, thoroughly searched, and carefully guarded. They must be treated humanely, without distinction based on race, color, religious belief, or other reason. The murder, mutilation, or torture of a civilian or a prisoner of war, besides being a crime, is a serious violation of the Convention. Prisoners may not be humiliated or degraded. They must be protected against all acts of violence, insults, public curiosity, and reprisals of any kind.

All captives should be treated alike; privileged treatment may be accorded only on grounds of poor health, advanced age, military rank or certain professional qualifications. Women cap-

tives must be treated as well as male prisoners. They must also be provided with any special care required because of their sex. Captured *medical personnel and chaplains* are not considered to be prisoners of war. They must be allowed to carry on their normal work for the benefit of prisoners and cannot be required to perform any other work. Chaplains in particular should have maximum freedom to minister to the religious needs of prisoners.

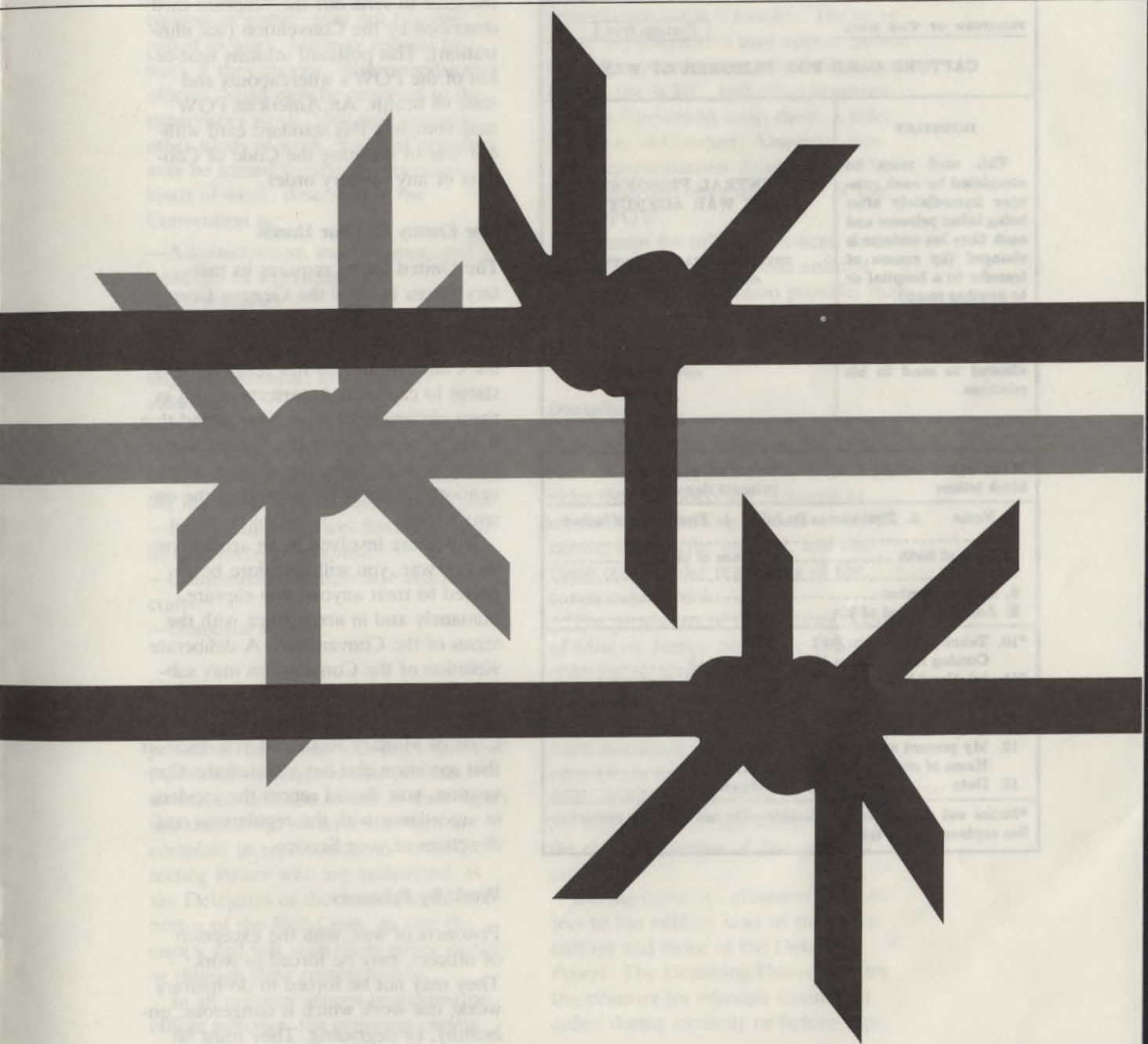
Evacuation of prisoners of war from the battle area must be carried out as swiftly, safely, and humanely as possible. While awaiting such movement, prisoners must not be exposed unnecessarily to danger.

At the end of active hostilities, prisoners must be released and repatriated without delay.

Prisoners of war, if questioned, are required to give name and age, rank and service number. They may not be compelled to give other information. While it is all right to question POWs, no harm, threats, discomfort or torture may be inflicted to obtain information from them. POWs must be allowed to retain their identity cards and papers, but any other military documents they have may be seized.

The Detaining Power should provide for prisoners of war free of charge adequate food and clothing, quarters as good as those of its own troops, and the medical care their states of health demand.

As soon as possible after capture, and in no case later than a week after the person reaches a prisoner-of-war camp, each prisoner must be allowed at



PRISONER OF WAR MAIL		Postage free
CAPTURE CARD FOR PRISONER OF WAR		
<p>IMPORTANT</p> <p>This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p>This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p>	<p>CENTRAL PRISONERS OF WAR AGENCY</p> <p>INTERNATIONAL COMMITTEE OF THE RED CROSS</p> <p>GENEVA SWITZERLAND</p>	

Write legibly and in block letters	1. Power on which the prisoner depends
2. Name	3. First names (in full) 4. First name of father
5. Date of birth	6. Place of birth
7. Rank	
8. Service number	
9. Address of next of kin	
*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.)	
*11. (a) Good health—(b) Not wounded—(c) Recovered— (d) Convalescent—(e) Sick—(f) Slightly wounded— (g) Seriously wounded.	
12. My present address is: Prisoner No. Name of camp	
13. Date 14. Signature	
*Strike out what is not applicable—Do not add any remarks— See explanations overleaf.	

the least to send out the "capture card" described by the Convention (see illustration). This postcard informs next-of-kin of the POW's whereabouts and state of health. An American POW may complete this standard card without fear of violating the Code of Conduct or any military order.

The Enemy In Your Hands

The United States requires its military forces to obey the Geneva Conventions. This has been our policy even when the enemy has blatantly violated the Conventions and has refused POW status to captured Americans. Even in these circumstances, we have found that it has been better for the United States to continue to apply the Geneva Conventions rather than descend to the enemy's level.

If you are involved in an armed conflict or war, you will therefore be expected to treat anyone you capture humanely and in accordance with the terms of the Conventions. A deliberate violation of the Conventions may subject you to disciplinary action, including trial by court-martial under the Uniform Code of Military Justice. If you discover that someone else has violated the Convention, you should report the incident in accordance with the regulations and directives of your Service.

Work By Prisoners

Prisoners of war, with the exception of officers, may be forced to work. They may not be forced to do military work, nor work which is dangerous, unhealthy, or degrading. They must be

paid. Officer prisoners and "persons of equivalent status" may not be compelled to work, but may request to work if they choose. Noncommissioned officers "shall only be required to do supervisory work," but may request other kinds of work. Enlisted prisoners may be forced to perform specified kinds of work, described in the Convention as:

—Administration, maintenance, and installation of the camp.

—Agriculture.

—Industries connected with raw materials and manufacturing (but not metallurgical, chemical, or machinery industries).

—Public works and construction which have *no military character or purpose*.

—Transport and handling of stores that are *not military in character or purpose*.

—Public utility services having *no military character or purpose*.

—Commercial business and arts and crafts.

—Domestic service.

Complaints

The text of the Convention must be posted in each camp in a language(s) all POWs understand, so that prisoners may at all times be aware of their rights and duties. POWs have the right to complain to representatives of the Protecting Power who are authorized, as are Delegates of the International Committee of the Red Cross, to visit the camps and talk with them either directly or through their representative.

In all prisoner groups containing no officer prisoner, the prisoners choose

their spokesman or representative by secret ballot every 6 months. The prisoners' representative may appear before the military authorities, the Protecting Power, the ICRC, and other organizations authorized to assist them. Under the Code of Conduct, American prisoner representatives should follow the leadership and obey the orders of the senior POW.

In camps for officer prisoners, or in camps for both officers and enlisted prisoners, the Convention provides that the senior officer must be recognized as prisoners' representative for the camp.

Discipline

Military discipline continues in a prisoner-of-war camp. The Convention provides that prisoners are required to salute higher ranking officers of the Detaining Power (the enemy), and the camp commander regardless of the commander's rank.

The provisions of the Uniform Code of Military Justice and other U.S. laws continue to apply to members of the U.S. Armed Forces while they are prisoners of war. The Code of Conduct sets forth standards of conduct for Americans which reinforce these legal controls. All American POWs must obey the legal orders of the senior POW in the camp regardless of that person's service.

During captivity, prisoners are subject to the military laws of their own nations and those of the Detaining Power. The Detaining Power may try the prisoner for offenses committed either during captivity or before cap-

ture. A POW may *not* be punished simply because of having fought against the enemy before capture. The prisoner may, however, be punished for having personally violated the Conventions, for example by having tortured an enemy POW or civilian. The prisoner must be tried by the same courts as try members of the armed forces of the Detaining Power and must be given the same procedural rights as members of that state's armed forces. In addition, a prisoner must be given *notice of the charges* against him or her, be allowed the assistance of a lawyer (either of the prisoner's own choice or appointed), one fellow prisoner and an *interpreter*, and be allowed to call *witnesses* in his or her defense.

The Geneva Convention also limits the amount of nonjudicial punishment which can be given for minor offenses (including an escape attempt not involving violence) to 30 days confinement and extra duties and deprivation of privileges for similar periods. Unless a prisoner injures someone, the prisoner cannot be tried by an enemy court simply for trying to escape or helping others to escape. The Conventions recognize that it is a POW's duty to try to escape.

Even if convicted by the Detaining Power, a prisoner still retains the general rights of a PW during imprisonment as far as food, clothing, mail and medical care are concerned. Most Communist nations have, however, stated that they will not follow this rule with respect to POWs convicted of "war crimes." While the United States has rejected this position, the practical effect is that if a POW should be con-

victed by a Communist nation of violating the laws of war ("war crimes"), the person must be prepared for possible treatment as an ordinary criminal in the jails of the Detaining Power.

During the conflict in Southeast Asia, the North Vietnamese refused to apply the Geneva Convention to American POWs. According to North Vietnam *all* American prisoners were war criminals. As the U.S. government repeatedly pointed out, however, the Communist statements properly apply only to prisoners *convicted* of war crimes after a fair trial, not to those who have only been accused, as was the case of the American prisoners in North Vietnam.

A prisoner of war may never be subjected to *reprisals*. That is, a POW may never be punished for a crime committed by someone else, and in which the prisoner did not participate.

Making The Convention Work

The United States and our allies follow the Convention closely. We support it because it establishes human rights that are in harmony with our national beliefs and traditions. We recognize that the Convention is part of our law and of international law.

Full compliance with the POW Convention is not always easy, especially in the heat of battle. Nevertheless, your country expects it of you. Our national reputation and your own well-being are at stake.





The Secretary of Defense
Washington
March 1, 1980

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